

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN F. WINKELMAN, JR.,

Petitioner

:

:

No. 4:01-CR-304

v.

:

:

(Chief Judge Kane)

UNITED STATES OF AMERICA,

Respondent

:

MEMORANDUM ORDER

On December 6, 2012, the Court denied Petitioner's second or successive Section 2255 motion because it was not authorized by the Third Circuit. (Doc. No. 1233.) On February 14, 2013, the Court received a letter from Petitioner asking him to send the Court's order on his Section 2255 motion. (Doc. No. 1249.) That same day, the Clerk of Court mailed the December 6, 2012 order to Petitioner. On February 26, 2012, Petitioner filed the instant motion to reopen the period in which to file a notice of appeal, asserting that he did not receive a copy of the order denying his Section 2255 motion until February 19, 2012. (Doc. No. 1257.)

Federal Rule of Appellate Procedure 4(a)(6) provides that a district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, if the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.
Fed. R. App. P. 4(a)(6).

The record supports a finding that Petitioner was not served with the December 6, 2012 order until February 14, 2012, more than 21 days after entry of the order. Moreover, Petitioner filed the instant motion within the deadline for filing a motion to reopen the time to file an appeal: Petitioner filed his motion to reopen less than 180 days after the December 6, 2012 order was entered, and less than 14 days after the Clerk of Court served Petitioner with the order. Finally, the Court finds that no party would be prejudiced by the Court's reopening of the time to file an appeal.

ACCORDINGLY, on this 28th day of February 2013, **IT IS HEREBY ORDERED**
THAT Petitioner's motion to reopen the time to file an appeal of the Court's order denying his motion for return of property (Doc. No. 1257) is **GRANTED**. Petitioner may file a notice of appeal of the Court's December 6, 2012 order (Doc. No. 1233) within 14 days of the date of this order.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania